

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

W.P.No. 11741 of 2000

This writ petition is for a Mandamus declaring the orders in Rc.No.1018/95-C, dated 09-07-1997 passed by the Deputy Registrar of Co-operative Society, Tekkali, 1st respondent, in exercise of the powers U/s 60 (1) of the A.P. Co-operative Societies Act, 1964 (for short the "Act"), whereunder the petitioner was surcharged to make good an amount of Rs. 14,185/- with interest at the rate of 18% per annum from the date of drawal of the said amount as confirmed by the A.P. Co-operative Tribunal, Vijayawada, 2nd respondent, in O.A.No. 114/97, dated 28-01-2000, as illegal and arbitrary and for a consequential direction not to take steps to recover the compensation allowance paid to the petitioner. Assailing the validity of both the orders this writ petition is filed.

The petitioner was paid Secretary of the Sompeta Primary Agricultural Co-operative Society, Srikakulam District (for short the "Sompeta Society"). He was also given full additional charge Secretary of the Primary Agricultural Co-operative Society, Potrakonda, Srikakulam District (for short the "Potrakonda Society". The 1st respondent, who was concerned authority for placing him in full additional charge, passed the said orders. It is stated in the affidavit that the Potrakonda Society is at a distance of 35 kms. away from Sompeta Society and the petitioner was discharging the additional duties in addition to the regular duties as Secretary of Sompeta Society. As he was attending the additional charge duties he has claimed allowance on account of his additional duties and other traveling allowance. It is stated that the president of the Potrakonda Society addressed a letter on 31-10-1993 to the concerned District Co-operative Officer, who made an endorsement thereon to the effect that "discuss in the managing committee meeting and do the needful". It is the case of the petitioner that pursuant to the said endorsement the concerned District Co-operative Officer and the managing committee

of the society passed a resolution for payment of additional charge allowance and also the traveling allowance incurred by the petitioner when he was attending to the full additional charge duties at Potrakonda Society for the entire period, including the advance drawn. On 11-02-1994 he has drawn a total amount of Rs.14,185/- from the said Society where he discharged additional charge duties.

Subsequently when the said drawal of amount was objected to in the audit, proceedings were initiated against the petitioner for surcharge U/s 60(1) of the Act and a show-cause notice was issued proposing to recover the said amount. The petitioner filed a detailed explanation to the show-cause notice. In his explanation his defence was that he has drawn the amount as additional charge allowance pursuant to the resolution passed by the managing committee of the society in view of the earlier endorsement made by the District Co-operative Officer on 31-10-1993, whereunder the managing committee was asked to consider for payment of additional duty allowance. Though the detailed explanation was filed by the petitioner, the 1st respondent, without proper consideration, passed the orders dated 9-7-1977 to recover the amount of Rs.14,185/- from the petitioner merely stating that the explanation is not convincing. Even the appeal against the order of the 1st respondent, preferred by the petitioner is rejected by the 2nd respondent on the ground that the District Co-operative Officer cannot delegate his power to the managing committee or to the president of the society so as to permit the petitioner to withdraw such additional charge allowance.

Though counter affidavit is filed on behalf of the respondents there is no denial of the endorsement alleged to have been made by the District Co-operative Officer on 31-10-1993.

Heard Sri S.Siva Prasad, learned counsel for the petitioner and perused the counter affidavit.

The learned counsel for the petitioner contends that in this case admittedly the petitioner was given additional charge of the society, which is about 35 kms. away from the place where he was working in

the Sompeta society. A representation was made to the president of the society for drawal of additional charge allowance and the president of the Society addressed a letter to the concerned District Co-operative Officer, who made an endorsement permitting the managing committee to do the needful in the matter. It is stated, pursuant to such an authorization given by the District Co-operative officer the managing committee has passed a resolution for payment of such amount and the amounts which were alleged to have drawn by the petitioner unauthorisedly. Consequent to the resolution passed, the petitioner was permitted for withdrawal of such amount. In that view of the matter it cannot be said that the petitioner unauthorisedly drew the said amount and that therefore recovery cannot be made from the petitioner.

I find force in the contention of the learned counsel for the petitioner. It is not in dispute that the petitioner was posted as in-charge Secretary to discharge full additional charge of Potrakonda Society. The District Co-operative Officer passed the said orders. It is also not in dispute that the petitioner was attending and discharging the additional duties apart from looking after the other society where he was regular paid Secretary. When he made a representation for payment of such an allowance the president of Potrakonda Society addressed a letter to the District Co-operative Officer, whereon it is endorsed that the matter be discussed on the aspect and do the needful, on the basis of which the managing committee of the society passed a resolution permitting the petitioner for payment of additional charge allowance. In that view of the matter it cannot be said that the additional charge allowance of Rs.14,185/- drawn by the petitioner is unauthorised. Though the petitioner filed a detailed explanation, the primary authority did not properly consider the same and passed surcharge order merely stating that the explanation is not convincing. Even the appellate tribunal, 2nd respondent, rejected the appeal only on the ground that the District Co-operative Officer cannot delegate the power to the managing committee. If any such power is given to make endorsement permitting the managing committee to consider the same it is the District Co-operative Officer who is at fault, but not the petitioner who has drawn the amounts as per the resolution passed by

the managing committee of the society. In view of the endorsement made by the District Co-operative Officer and further resolution passed by the managing committee of the society, which are not in dispute, the drawal of the amount by the petitioner during the said period cannot be said to be unauthorisedly drawn amount. Hence, there is absolutely no basis for passing an order of surcharge to recover the amount from the petitioner.

For the foregoing reasons the impugned orders are liable to be set aside and accordingly the order dated 03-07-1997 passed by the 1st respondent, as confirmed by order dated 28-01-2000 of the appellate authority, 2nd respondent are set aside.

The writ petition is accordingly allowed. No order as to costs.

28th September, 2005

BJ/